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P57016**REMARKS**

This paper is filed in response to the telephone restriction of 23 April 2008. Reconsideration and re-examination are respectfully requested.

**Listing of the Claims**

Pursuant to 37 CFR §1.121(c), this listing of the claims, including the text of the claims, will serve to replace all prior versions of the claims, in the application.

**Amendment of the Claims**

No claims are amended by this paper.

**Status of the Claims**

Upon entry of this paper, claims 1 through 37 will be pending.

**Requirement for Restriction - 37 CFR §1.142**

In the telephone restriction of 23 April 2008, the Examiner pursuant to 35 U.S.C. §121 and 37 CFR §1.142 required Applicant to make an election from one, each, of Species Group II and Species Group III:

**Species Group II**

- Species B1, wherein the electrolytic solution, or injection hole inlet, has a sloping cross-section (appears to be claims 8 and 23);
- Species B2, wherein the electrolytic solution inlet or injection hole, has a stepped portion recessed to a predetermined depth in the neighborhood of the electrolytic

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solution inlet or injection hole (appears to be claims 9 and 24).

**Species Group III**

- Species C1, wherein the first electrode tab is electrically connected to a terminal pin connected to the cap plate and arranged to be insulated therefrom, and the second electrode tab is welded to the cap plate at a position **between (Figure 2)**, the terminal pin and the electrolytic solution inlet (appears to be claim 11);
- Species C2, wherein the first electrode tab is electrically connected to a terminal pin connected to the cap plate and arranged to be insulated therefrom, and the second electrode tab is welded to the cap plate at a position **opposite to (Figure 9)**, the electrolytic solution inlet with respect to the terminal pin (appears to claims 12 and 14, lines 11-12).

**Applicant's Election - 37 CFR §1.142**

Applicants respectfully traverse the election requirement imposed in the telephone restriction, but provisionally elect Species B1 from **Species Group II**, and provisionally elect Species C2 from **Species Group III**.

**Applicant's Traversal of the Requirement for Restriction - 37 CFR §1.142**

Applicant objects to and traverses the restriction requirement on the grounds that the subject matter of the four groups are overlap and must be simultaneously examined in compliance with 37 CFR §1.104(a). In addition, the mandatory fields of search for the four embodiments are coextensive. Finally, it appears that the restriction requirement is being imposed merely for administrative convenience, and such a basis for imposition of a restriction requirement has been

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prohibited in previous decisions of the Commissioner.

In telephone restriction, the Examiner stated that the embodiments of Species B1-B2 and Species C1-C2 are patentably distinct species. This restriction is improper and contrary to Office policy; the basis for Applicant's traverse is, as follows.

As specifically stated in MPEP § 803, the Examiner must show that the (A) The inventions must be independent (see MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (see MPEP § 806.05 - § 806.05(i)); and (B) There must be a serious burden on the examiner if restriction is required (see MPEP § 803.02, § 806.04(a) - § 806.04(i), § 808.01(a), and § 808.02). The Examiner must prove there is a serious burden on the Examiner. It is respectfully submitted that there would not be a serious burden upon the Examiner in searching the invention of Species B1-B2 and Species C1-C2.

Moreover, the Examiner fails to either aver the existence of a serious burden, or even that Applicant's are classified in different subclasses, or the fields of mandatory search are different. In point of fact, the Examiner fails identify any classification for the individual species. There is therefore, on the record of this prosecution history, neither factual evidence which would support a naked allegation of any reason for this requirement under 37 CFR § 1.146, nor factual basis for an evidentiary inference that would justify the imposition of this requirement. In short, this imposition of a requirement for an election of species merely delays a timely completion of the examination without concomitant benefit to the Applicant. Its withdrawal is respectfully requested. Such action is respectfully urged.

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If the requirement for restriction is not withdrawn, then the Applicants reserve the right to file a Petition to the Commissioner because there is no *serious* burden upon the Examiner in searching the invention of Species B1-B2 and Species C1-C2.

In conclusion, Applicant objects to and traverses the election requirement on the grounds that the subject matter of the four species overlap. In addition, the mandatory fields of search for the four embodiments are coextensive. Finally, it appears that the election requirement is being imposed merely for administrative convenience and such a basis for imposition of such a requirement has been prohibited in previous decisions of the Commissioner.

In view of the foregoing demonstration of the impropriety of this requirement, it is requested that the restriction requirement be withdrawn. It is further submitted that the application is in condition for examination on the merits, and early allowance is requested.

No fee is incurred by this response.

Respectfully submitted,

  
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